

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

ALI GHADERSOHI,

Plaintiff,

v.

HEALTH RESEARCH, INC.,

Defendant.

DECISION AND ORDER

10-CV-144S(Sc)

1. On November 29, 2011, Plaintiff moved to withdraw his Complaint and his then-pending summary judgment motion. The motion to withdraw was granted (Docket No. 60), and Judgment was entered on December 27, 2011 (Docket No. 61). On May 14, 2012, Plaintiff moved for an extension of time to file a notice of appeal. (Docket No. 66.)

2. Rule 4(a)(1)(A) of the Federal Rules of Appellate Procedure requires that a notice of appeal be filed within 30 days after entry of the judgment or order appealed from; in this case, no later than January 26, 2012.

The district court may extend the time to file a notice of appeal if:

- (i) a party so moves no later than 30 days after the time prescribed by this Rule 4(a) expires; and
- (ii) regardless of whether its motion is filed before or during the 30 days after the time prescribed by this Rule 4(a) expires, that party shows excusable neglect or good cause.

Fed. R. App. P. 4(a)(5)(A). Thus, the last day on which Plaintiff could move for an extension of time to file his notice of appeal was Monday, February 27, 2012.

3. Plaintiff's motion is untimely, and this Court lacks the power to grant such a motion filed beyond the prescribed time period. See United States v. Lucangeli, No. 99 Cr. 637-

01, 2000 U.S. Dist. LEXIS 169, at *2-3 (S.D.N.Y. Jan. 13, 2000) (applying Fed. R. App. P. 4 to criminal case). Moreover, even assuming, *arguendo*, that this Court had the power to consider Plaintiff's untimely motion, his vague assertions of back pain, neck pain, and eye surgery fail to adequately establish either "excusable neglect" or "good cause" for his nearly five month delay in filing the instant motion.

4. Accordingly, Plaintiff's Motion for an Extension of Time to File Notice of Appeal (Docket No. 66) is DENIED.

SO ORDERED.

Dated: May 16, 2012
Buffalo, New York

s/William M. Skretny
WILLIAM M. SKRETNY
Chief Judge
United States District Court